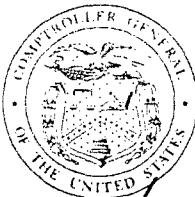


PLM

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

[Request for Reimbursement of Consulting Fees]

10,438

FILE: B-192438

DATE: June 13, 1979

MATTER OF: Gerald C. Phillips - Intergovernmental
Personnel Act - Consulting Fees

DIGEST: Rice University made payment of \$12,000 to faculty member for consulting fees that he lost when it detailed him to Department of Energy (DOE) under Intergovernmental Personnel Act (IPA) of 1970. Before detail, employee was regularly paid consulting fees by private corporation on 1 business day off per week granted by University for such purpose. Office of Personnel Management considers such fees to be part of employee's accademic pay. The University's payment to the faculty member may be reimbursed by DOE under 5 U.S.C. § 3374(c).

DLG 01783

This decision responds to the request of Robert L. Zanetell, Director, Office of Finance and Accounting, Department of Energy (DOE), for an advance decision as to whether the DOE may reimburse William Marsh Rice University, Houston, Texas, an amount of \$12,000 that it paid to its faculty member, Dr. Gerald C. Phillips. This amount represents consulting fees which Dr. Phillips would have earned from a private company had he not been detailed from the University to serve 1 year with DOE under the authority of the Intergovernmental Personnel Act of 1970, 5 U.S.C. §§ 3371, et seq.

AGC 0091

The issue is whether DOE reimbursement of the consulting fees is authorized under 5 U.S.C. § 3374(c) of the Act, which permits Federal executive agencies to reimburse state or local governments for the "pay" of their employees detailed to the agencies.

Dr. Phillips was detailed to serve 1 year from approximately September 1, 1976, to August 31, 1977. The DOE agreed to reimburse Rice University for 12 months of Dr. Phillips' basic salary of \$44,000, related fringe benefits of \$7,084 as well as the University's payment for the consultant fees given up by Dr. Phillips during the detail.

The policy of Rice University, as expressed in a formal memorandum, is to permit faculty members 1 day each week to perform consulting and other services to outside organizations for remuneration. The University recognizes that such activities enrich teaching

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and research, thereby benefiting both the University and the individual faculty member. The University's Comptroller Office has informally advised us that the 1 day per week covers periods during business hours ordinarily spent in teaching, research, and other activities. The free day is taken into account by Rice University in establishing teaching loads and other faculty time available to the University. The earnings derived from the 1 day of outside activity make possible a substantial supplement to the faculty members' salaries. The additional compensation induces persons with high qualifications to become faculty members and remain at the University.

In Dr. Phillips' case, the annual faculty reports submitted to the University for the years 1974, 1975, and 1976 show that he had a professional relationship with Columbia Scientific Industries, Inc., involving approximately 50 days each year. By letter of January 30, 1978, the President of Columbia Scientific Industries informed DOE that Dr. Phillips was a co-founder of that Corporation, a major shareholder, and a member of its board of directors. The letter said that Dr. Phillips was routinely receiving from the Corporation compensation in excess of \$1,000 per month before he had accepted the appointment with DOE. Such compensation terminated when he accepted the appointment.

Although the University is a private organization, 5 U.S.C. § 3372(b) states that 5 U.S.C. §§ 3371-3376 apply to employees of institutions of higher education assigned to Federal executive agencies. Consequently, Dr. Phillips and the University are regarded the same as an employee and a state or local government employer, respectively, for the purpose of a Federal executive agency's reimbursement of pay for a detailed employee under 5 U.S.C. § 3374(c).

The authority to prescribe regulations for administration of the Intergovernmental Personnel Act has been delegated to the Office of Personnel Management (OPM). 5 U.S.C. § 3376 (1976) and Executive Order No. 11589, April 1, 1971, amended by Executive Order No. 12107, 44 Federal Register 1055, January 3, 1979. In response to our request for advice in this matter, Mr. Norman Beckman, Assistant Director for Intergovernmental Programs, OPM, stated in a letter dated April 20, 1979, in pertinent part:

"* * * As in the case of Mr. Phillips, we have advised Federal agencies interested in IPA assignments with universities that when the regular tour of duty for a university employee includes an allotment of time for

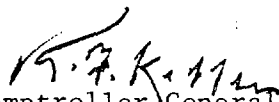
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consulting, or when the employee is performing any job-related consulting that cannot be continued during the assignment, the monies received from the consulting may be regarded as part of the employee's academic pay. * * *

Mr. Beckman concluded as follows:

"The IPA mobility program provisions on this issue are consistent with the overall pay setting policies of the Office of Personnel Management. They would allow the \$12,000 paid to Dr. Phillips by the university to be included in his university pay for the purpose of reimbursement by DOE."

We concur with the views of OPM, as expressed in Mr. Beckman's letter. Accordingly, the amount paid to Dr. Phillips by Rice University for lost consultant fees may be reimbursed under its agreement with DOE.


Deputy Comptroller General
of the United States